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07/308,282 02/09/89 MATSUI

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EXAMINER

MARSCHEL, A

ART UNIT

PAPER NUMBER

7

187

DATE MAILED:

07/24/90

WATSON T. SCOTT  
CUSHMAN, DARBY & CUSHMAN  
11TH FLR., 1615 L STREET, N. W.  
WASHINGTON, DC 20036-5601

This is a communication from the examiner in charge of your application.  
COMMISSIONER OF PATENTS AND TRADEMARKS

☒ This application has been examined ☐ Responsive to communication filed on \_\_\_\_\_ ☐ This action is made final.

A shortened statutory period for response to this action is set to expire 1 month(s), \_\_\_\_\_ day(s) from the date of this letter.  
Failure to respond within the period for response will cause the application to become abandoned. 35 U.S.C. 133

Part I THE FOLLOWING ATTACHMENT(S) ARE PART OF THIS ACTION:

- |   |   |
|---|---|
| 1. <input type="checkbox"/> Notice of References Cited by Examiner, PTO-892.        | 2. <input type="checkbox"/> Notice re Patent Drawing, PTO-948.                  |
| 3. <input type="checkbox"/> Notice of Art Cited by Applicant, PTO-1449.             | 4. <input type="checkbox"/> Notice of Informal Patent Application, Form PTO-152 |
| 5. <input type="checkbox"/> Information on How to Effect Drawing Changes, PTO-1474. | 6. <input type="checkbox"/> _____   |

Part II SUMMARY OF ACTION

1. ☒ Claims 1-15 are pending in the application.  
Of the above, claims \_\_\_\_\_ are withdrawn from consideration.
2. ☐ Claims \_\_\_\_\_ have been cancelled.
3. ☐ Claims \_\_\_\_\_ are allowed.
4. ☐ Claims \_\_\_\_\_ are rejected.
5. ☐ Claims \_\_\_\_\_ are objected to.
6. ☒ Claims 1-15 are subject to restriction or election requirement.
7. ☐ This application has been filed with informal drawings under 37 C.F.R. 1.85 which are acceptable for examination purposes.
8. ☐ Formal drawings are required in response to this Office action.
9. ☐ The corrected or substitute drawings have been received on \_\_\_\_\_. Under 37 C.F.R. 1.84 these drawings are ☐ acceptable; ☐ not acceptable (see explanation or Notice re Patent Drawing, PTO-948).
10. ☐ The proposed additional or substitute sheet(s) of drawings, filed on \_\_\_\_\_, has (have) been ☐ approved by the examiner; ☐ disapproved by the examiner (see explanation).
11. ☐ The proposed drawing correction, filed \_\_\_\_\_, has been ☐ approved; ☐ disapproved (see explanation).
12. ☐ Acknowledgement is made of the claim for priority under U.S.C. 119. The certified copy has ☐ been received ☐ not been received ☐ been filed in parent application, serial no. \_\_\_\_\_; filed on \_\_\_\_\_.
13. ☐ Since this application appears to be in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11; 453 O.G. 213.
14. ☐ Other

EXAMINER'S ACTION

Restriction to one of the following inventions is required under 35 U.S.C. 121:

I. Claims 1-7, drawn to the alpha-PDGF receptor gene and its expression, classified in Class 536, subclass 27.

II. Claims 8-10, drawn to antibodies to PDGF receptor proteins, classified in Class 530, subclass 387.

III. Claim 11, drawn to a detection method for alpha-PDGF receptor sequence using DNA probe hybridization, classified in Class 435, subclass 6.

IV. Claims 12 and 13, drawn to immunoassay methods whereby PDGF receptor antigens are detected by antibody binding, classified in Class 436, subclass 538.

V. Claims 14 and 15, drawn to bioassays using the PDGF receptor protein biological activity, classified in Class 935, subclass 82.

The inventions are distinct, each from the other because of the following reasons:

Inventions of Group I and Group III are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product (MPEP 806.05(h)). In the instant case, the product as claimed can be used in a materially different process such as in situ chromosome labeling of the PDGF receptor gene locus.

Inventions of Group II and Group IV are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a

materially different process of using that product (MPEP 806.05(h)). In the instant case, the product as claimed can be used in a materially different process such as inhibition of the PDGF receptor protein binding activity on the cell surface via antibody binding.

Group V pertains to the biological activity of the receptor proteins in practicing the method therein disclosed. This activity is not necessary nor included within the other groups and thus is clearly distinct and separate subject matter and therefore serves as a basis for the above restriction requirement.

Additionally, the Group I/III, Group II/IV, and Group V relationship is described as nucleic acid sequences and their use, antibodies to PDGFs and their uses, and receptor protein activity via binding to its ligand, respectively. These are clearly distinct subject matter areas which meet the criteria for the above restriction requirement.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent subject matter, restriction for examination purposes as indicated is proper.

A telephone call was made to Watson Scott on 6/25/90 to request an oral election to the above restriction requirement, but did not result in an election being made.

A telephone call was made to Watson Scott on 7/12/90 to request an oral election to the above restriction requirement. Mr. Scott relayed the request that the restriction requirement be made in writing.

Applicant is advised that the response to this requirement to be complete must include an election of

the invention to be examined even though the requirement may be traversed (37 CFR 1.143).

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a diligently-filed petition under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(h).

Any inquiry concerning this communication should be directed to Ardin Marschel, Ph.D., at telephone number: 703-557-0664

AM

A. MARSCHEL:am

July 17, 1990



ROBERT A. WAX  
SUPERVISORY PATENT EXAMINER  
ART UNIT 187